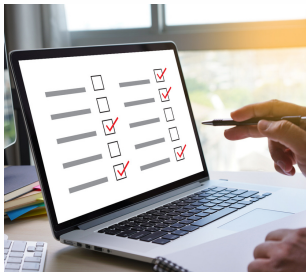




DIVORCE AND SEPARATION GUIDE

HOW WE CAN HELP

Law Tram provides an Australian-only platform that makes the journey through separation and divorce less daunting. By connecting you with skilled legal professionals, we facilitate a process that prioritises your well-being and privacy. Our only goal is to connect you with a solicitor who has already been briefed on your matter, ensuring you feel empowered and informed every step of the way towards a new chapter in your life.



STEP 1

**Complete legal
questionnaire**



STEP 2

**Generate a free legal
brief (a summary of
your information)**



STEP 3

**Australian
solicitors contact
you if they can help**

Disclaimer

Nothing in this guide is legal advice applicable to your specific legal situation. Law Tram ABN 95783170741 is not a law practice and though this guide was written by an Australian lawyer, it should not be relied upon beyond giving you ideas of where to seek advice in relation to your particular legal situation.



TABLE OF CONTENTS

PART 1

1. Privacy & Confidentiality
2. Introduction
3. What are Lawyers Called in Australia?
4. Why Retain a Solicitor?
5. Does it Matter if we're not Married?
6. Navigating the Initial Steps of Separation
7. Taking the Children
8. Regarding the Family Home
9. Dealing with Domestic & Family Violence
10. Addressing Domestic Violence in Victoria: Understanding Intervention Orders
11. Intervention Orders in Victoria
12. Implications for Families and Children in Victoria
13. Resources and Support in Victoria
14. Separation Under One Roof

PART 2

15. Child Custody
16. Negotiating Child Care Arrangements
17. Primary Caregiver Considerations
18. Scheduling Time with Each Parent
19. Transition Arrangements
20. Communication About Child - Related Matters
21. Flexibility in Arrangements
22. Special Considerations for Young Children
23. Relocation Requests
24. Impasse in Agreements
25. Child's Input
26. International Travel
27. Child Alert Requests - Passport Office
28. Limiting Parental Access
29. Provide orders to Childcare / School
30. Modifying Court Orders



TABLE OF CONTENTS

PART 3

1. Financial agreements after separation
2. Financial Precautions
3. Understanding Child Support
4. Formalising Agreements
5. When Agreement Fails
6. Enforcement and Compliance
7. Support for Children Over 18
8. Spousal Maintenance
9. Incorporating Maintenance into Settlements
10. Determining Asset Distribution
11. Home Ownership
12. Factors Considered in Asset Division
13. Adjustments for Caregivers
14. Staying in the Family Home
15. Inheritances

PART 4

16. Formalising Your Agreements
17. Consent Orders: A Smooth Path to Agreement
18. Binding Financial Agreements: Efficient and Effective
19. Establishing a Strong Financial Foundation: The Role of BFAs before marriage
20. Facilitating Fair Financial Futures: Drafting BFAs During Separation
21. Exploring Alternatives When Agreement is Elusive

PART 5

1. Understanding the Divorce Process
2. Legal Definition of Divorce
3. Reasons for Seeking Divorce
4. Opposing a Divorce
5. Important Considerations
6. Social Media in Family Law
7. A Double - Edged Sword
8. The Court's Stance on Social Media
9. Digital Assets and Social Media Management



**PRIVACY ISN'T ABOUT
SOMETHING TO HIDE.
PRIVACY IS ABOUT
SOMETHING TO
PROTECT.**

- E SNOWDEN

IMPORTANT!

PRIVACY & CONFIDENTIALITY

Keeping your browsing history, emails, and any evidence that you're seeking legal advice absolutely private is crucial for two main reasons. Firstly, it helps to preserve legal professional privilege, which is a rule that keeps communications between you and your lawyer confidential. This means nobody else can force you to share what's been discussed when you are seeking legal advice (such as through a service that connects you with solicitors like Law Tram), which is vital for getting honest and open legal advice.

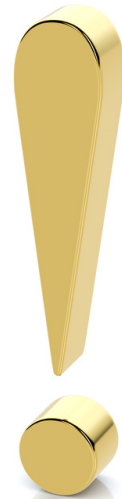
Secondly, for people dealing with domestic and family violence matters, maintaining privacy is key to staying safe. If an abusive partner finds out you're seeking help or planning to leave, it could escalate the situation and put you in more danger. This is why we have a Quick Exit Button on our website.



PRIVACY & CONFIDENTIALITY

Here are some tips on how to keep your sensitive legal advice private, especially when reading guides on our websites like Law Tram:

1. **Use Incognito Mode:** When browsing, use incognito or private browsing mode. This way, your search history and visited sites aren't saved on your device.
2. **Clear Your Browser History:** Regularly clear your browser history, cookies, and cache to remove traces of your activities.
3. **Use a Safe Device:** If possible, use a device that the person you're trying to keep information from doesn't have access to. This could be a friend's phone or a computer at a local library.
4. **Change Passwords:** Make sure your passwords are strong and changed regularly. Don't use passwords that someone could easily guess.
5. **Private Email Account:** Create a new email account that only you know about for sensitive communications, especially with your lawyer or support services.
6. **Be Careful with Shared Accounts:** Remember that shared accounts or family plans for mobile phones and apps can sometimes allow others to see your calls, messages, or app usage.



Remember, protecting your privacy is not just about keeping your legal plans confidential; it's also about ensuring your safety and the integrity of your legal process.



INTRODUCTION

Breaking up ranks among life's most challenging experiences. Psychologists confirm that the end of a romantic relationship stands shoulder to shoulder with life's most profound stressors, including the loss of a loved one. The common expectation is that life will improve post-breakup, following a period of adjustment. While this can sometimes be true, the journey there is often fraught with emotional turbulence, financial concerns, and dilemmas surrounding children.

This guide aims to serve as a basic introduction to some of the issues you may face when dealing with separation. We outline the crucial discussions you and your partner must undertake—this encompasses arrangements for children, financial planning for the future and the division of shared assets. Additionally, it provides guidance for scenarios where mutual agreement remains elusive.

As you continue reading, please keep in mind the uniqueness of each relationship and family dynamic. This guide is not legal advice and only offers a general framework for navigating separation and related challenges, however, for personalised guidance we recommend engaging a suitable lawyer which you can be connected with through Law Tram.

Law Tram is a world first online service that connects you with Australian solicitors in a unique way that is designed to reduce your stress. We are not a law firm, but rather a platform that allows you to create a free legal brief online, anonymously, enabling excellent lawyers to reach out and provide assistance having already read about your legal matter. Moreover, you have the option of an anonymous chat with a Virtual Paralegal further simplifying the process of finding the right lawyer for your needs.



What are Lawyers Called in Australia?

In Australia lawyers who work in the area of family law are often called “family lawyers”, though technically are “Australian Legal Practitioners” or “solicitors”. These terms can all be used interchangeably.



A lawyer who decides to specialise in working in court rooms, arguing cases or providing specialist detailed advice to solicitors is known as a “barrister” and needs to complete separate further training to become a barrister.



You do not need a barrister, unless your family lawyer recommends one, as family lawyers are entitled to argue cases in court without the need to become a barrister.

In Australia, the term “attorney” is a specific word that refers to someone with power over someone else’s property or health matters and is not used as it is in the USA and other countries to refer to lawyers.





Why Retain a Solicitor?

Retaining a family lawyer in Australia to help with family law matters, such as separation and property divisions, is important for several reasons. Here are five key points that highlight the benefits of having a solicitor over going through the process without legal assistance:



**THE POWER OF THE
LAWYER IS IN THE
UNCERTAINTY OF THE
LAW.**

J BENTHAM

- 1. Understanding Complex Laws:** Family law in Australia can be complex and hard to understand. A family lawyer knows the ins and outs of the law and can explain everything in simple terms. This means they can help you understand your rights and responsibilities, making sure you're fully informed every step of the way.
- 2. Protecting Your Rights:** A family lawyer will look out for your best interests. They'll make sure your rights are protected, especially when it comes to sensitive issues like child custody, property divisions, and financial settlements. Without a lawyer, you might not fully understand your legal rights or how to defend them.
- 3. Negotiation Skills:** Family lawyers are skilled negotiators. They can help you reach agreements with the other party without going to court, which can save you time, money, and stress. Their experience in negotiating fair settlements can be a huge advantage.
- 4. Avoiding Mistakes:** The legal system can be tricky, and filling out paperwork or handling legal procedures incorrectly can delay your case or even negatively impact the outcome. A family lawyer knows exactly what's needed and can ensure everything is done correctly and on time.
- 5. Emotional Support:** Dealing with family law matters can be emotionally draining. Having a lawyer means you've got someone on your side to take the burden off your shoulders. They can handle the legal stuff, so you can focus on moving forward with your life.



Does it Matter if we're not Married?

In Australia, when it comes to sorting out parenting matters and dividing property after a relationship ends, it doesn't really matter if you were married or not. This is because the Family Law Act treats de facto relationships (where people live together as a couple but aren't married) pretty much the same as married couples. This means everyone has access to the same protections and processes for resolving disputes about kids or how to split up property.

For parenting matters, the main focus is always on what's best for the children, regardless of the parents' marital status. The law looks at the children's needs and interests first, making sure they are taken care of. So, whether parents were married or living together without being married, they both have the right to ask for custody arrangements and support that consider the welfare of their kids.

When it comes to dividing property, the Family Law Act recognises both marriage and de facto relationships, including same-sex relationships. This is really important because it means everyone has the chance to fairly divide their property and assets, based on contributions to the relationship and future needs, no matter if they were married or not. It's all about making sure everyone is treated fairly and has a fair go at sorting things out when a relationship comes to an end.

Whether or not you are married is only relevant for the question of how much time each party has in order to apply to the court for orders relating to property.

DID YOU KNOW?

Fact #1: Australia recognises de facto relationships with nearly the same legal considerations as married couples, including property division and parenting matters.

Fact #2: Over 1 in 3 marriages in Australia end in divorce, but the Family Law Act ensures that children's best interests remain the priority, regardless of their parents' marital status.

Fact #3: Same-sex relationships received equal recognition under the Family Law Act in 2008, ensuring all couples have equal rights and protections.

Fact #4: A significant number of couples living together are in de facto relationships, with legal rights many are unaware of.

[Want to learn more? Ask a family law expert!](#)



Navigating the Initial Steps of Separation

The end of a relationship can manifest in various ways and for numerous reasons. Whether it's moving out, relocating to a different bedroom, or merely declaring the relationship over while cohabiting for practical reasons, the initial steps you take during separation are critical. Here are some practical suggestions and important considerations for the early stages of separation:

IT IS EASIER TO BUILD STRONG CHILDREN THAN TO REPAIR BROKEN MEN.

- F DOUGLASS

Taking the Children

If you plan to leave the family home and wish for the children to primarily reside with you, ensure they accompany you upon leaving. Establishing a stable living arrangement for them is crucial to avoid disputes over their future residence.

Attempt to discuss the arrangements for the children with your partner before any move. In cases of domestic violence, prioritise safety and leave with the children when it is safe to do so, avoiding impulsive actions like taking them without notice or agreement. Involve the police if necessary, as a precaution.

Regarding the Family Home

Leaving the family home does not incur a financial penalty in property settlement negotiations, contrary to popular belief. Take essential belongings, but avoid clearing out the home entirely.

Changing locks is generally permissible to prevent an ex-partner's return, but communicate this action to avoid unnecessary conflict.

It also doesn't matter whose name the title to the house is in, or who pays the mortgage. The family courts in Australia have the power to ignore questions of title registration (who is the registered owner) when making orders about dividing property.



Dealing with Domestic & Family Violence

In situations involving domestic violence, an Intervention Order may be sought to remove the abusive partner from the home. Your first stop though should be the police (call 000 on the phone), to ensure your safety and those of your children.

Addressing Domestic Violence in Victoria: Understanding Intervention Orders

Domestic violence is a critical issue in Victoria, as it is across Australia, affecting individuals and families across diverse communities. In response, Victoria's legal system offers protective measures, such as Intervention Orders (sometimes called "IOs"), to protect victims from further harm. These orders are a crucial part of the state's approach to combating domestic violence, but they also carry implications for family dynamics, particularly concerning children's relationships with their parents. The primary focus should always be safety.

Intervention Orders in Victoria

In Victoria, an Intervention Order is a court order designed to protect people from harmful family members or domestic partners. There are two types of orders in Victoria: Family Violence Intervention Orders (FVIOs), which are used to protect individuals from a family member, and Personal Safety Intervention Orders (PSIOs), which are for protection from non-family members. FVIOs are more relevant in domestic violence cases, as they specifically address issues within family dynamics, including the safety of children.

The process for obtaining a FVIO involves applying through the Magistrates' Court of Victoria. These orders can include various conditions, such as prohibiting the abuser from coming near the victim's home or workplace, making threats or violence, and contacting or communicating with the victim, including through social media.



Implications for Families and Children in Victoria

The issuance of an FVIO can have a significant impact the family unit, especially on children:

- 1. Emotional Support:** Recognising the emotional toll on children, there are various counselling and support services in Victoria specifically designed for young people affected by domestic violence. Organisations like the Victorian Child Witness Service provide assistance to children required to give evidence in court.
- 2. Family Dynamics:** With the enforcement of an FVIO, children may experience changes in their living arrangements and daily routines. Victoria's legal system and social services prioritise the well-being of children in these situations, ensuring that any court decisions consider the best interests of the child.
- 3. Parent-Child Relationship:** When an FVIO restricts a parent's access to their children, arrangements for child contact must be carefully managed. In Victoria, supervised contact services and family counselling are available to support positive and safe interactions between children and their non-residential parent.
- 4. Legal and Community Support:** Families in Victoria have access to a range of legal and community support services. Legal Aid Victoria, for example, offers free legal advice and representation for those dealing with family violence. Community organisations across the state provide additional support, from emergency housing to counselling and rehabilitation programs.





Resources and Support in Victoria

If you or someone you know is experiencing domestic violence in Victoria, there are several dedicated support services available to offer help and guidance. To the right are key contact details for immediate support:

Safe Steps Family Violence Response Centre

- For women and children experiencing domestic violence
- 24/7 Phone Line: 1800 015 188
- Website: safesteps.org.au

1800RESPECT

- National Sexual Assault, Domestic Family Violence Counselling Service
- 24/7 Phone Line: 1800 737 732
- Website: 1800respect.org.au

The Orange Door

- A free service for adults, children, and young people experiencing or witnessing family violence
- Website: orangedoor.vic.gov.au
- Contact Details: Visit The Orange Door website for the nearest service locations and phone numbers.

Men's Referral Service

- For men seeking assistance with relationship issues including violence
- Phone Line: 1300 766 491
- Website: ntv.org.au

Legal Aid Victoria

- For free legal advice and representation
- Phone Line: 1300 792 387
- Website: legalaid.vic.gov.au

Victorian Child Witness Service

- Support for children required to give evidence in court
- Phone Line: Contact the Magistrates' Court of Victoria directly for referral information.



Note:

Australian law validates 'separation under one roof' for legal and financial proceedings, demanding proof of altered marital status through separate living arrangements, financial independence, and social notification, over a mandatory 12-month separation.

Separation Under One Roof

"Separation Under One Roof" is a term used to describe a situation where a couple has decided to end their marital or de-facto relationship but continues to live in the same household. This arrangement can be temporary or long-term and is recognised under Australian family law, including within the State of Victoria. Here's a more detailed look into what this entails and its relevance to those residing in Victoria:

Legal Recognition

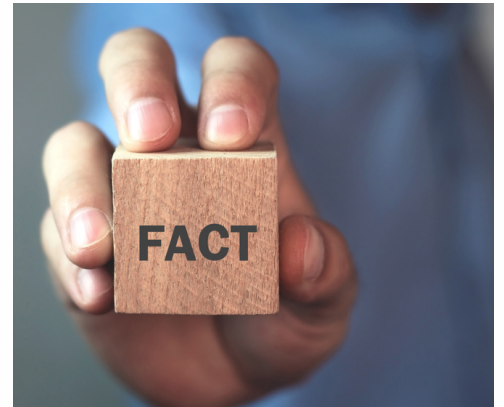
Australian family law recognises "separation under one roof" as a valid form of separation. This acknowledgment is important for various legal and financial reasons, such as applying for a divorce, dividing property, and assessing entitlements to government benefits. In Victoria, as in other Australian jurisdictions, couples who wish to divorce must be separated for at least 12 months. If part of this period includes living together in the same house, they must provide additional evidence to the court to prove that they were indeed separated during this time.



Evidence of Separation

For the separation to be acknowledged legally, the couple must demonstrate a change in their marital relationship. This includes but is not limited to:

- **Physical Separation:** Moving to separate bedrooms is a common indicator.
- **Financial Independence:** Establishing separate bank accounts, dividing bills or responsibilities differently, and ceasing to provide financial support to each other.
- **Social Recognition:** Informing friends, family, and relevant institutions (such as schools or government bodies) that you are separated.
- **Domestic Arrangements:** Changes in household duties, cooking separately, and cessation of shared activities.
- **Intent to Separate:** Both parties must demonstrate an intention to end the relationship. This can be communicated through a conversation, email, or text message, and it's crucial to document the date this occurs.



**THE TRUTH OF THE
STORY LIES IN THE
DETAILS.**

- P AUSTER



**THE WELL-BEING OF
CHILDREN IS THE
ULTIMATE INDICATOR
OF A HEALTHY
SOCIETY.**

R CAVOUKIAN

CHILD CUSTODY

Negotiating Child Care Arrangements

When a relationship ends, deciding on the care of any children involved is a crucial step. Some parents manage to agree on “custody” and visitation without court intervention. In Australia, the term “child custody” is not used, rather these matters are referred to as “parental responsibility”. There is no legal right to see a child, in Australia, rather the child’s parents have responsibilities to the child. Nonetheless, we have used the term ‘child custody’ as it is understood by more people. Here are key points to consider.

Primary Caregiver Consideration

Identify who has been the main caregiver, as children often benefit from stability by spending more time with this parent after separation.



Scheduling Time with Each Parent

Consider creating a schedule that outlines when each parent will have the children. This may include weekdays with the primary caregiver and alternate weekends with the other parent. Considerations for younger children may include shorter, more frequent visits, while older children might alternate weeks between parents. The schedule should be tailored to fit your unique circumstances.

Transition Arrangements

Decide on how and where transitions between parents will occur. Neutral locations like schools or child-friendly venues can ease these exchanges. In cases of family violence, secure locations such as police stations might be necessary, though this should be a last resort to minimise stress on the children.

Communication About Child-Related Matters

Establish a reliable and secure method of communication between parents, especially if direct conversation is challenging. Keep communications factual and respectful and remember your communications may become evidence in later court proceedings. Caution is advised with social media usage.

Flexibility in Arrangements

Agree on a process for requesting and making changes to the custody schedule, including notice periods and communication methods. Define what constitutes reasonable grounds for adjustments.



Special Considerations for Young Children

Understand that young children, especially those under four, may require shorter but more frequent visits with the non-primary caregiver to foster secure attachments without causing anxiety.

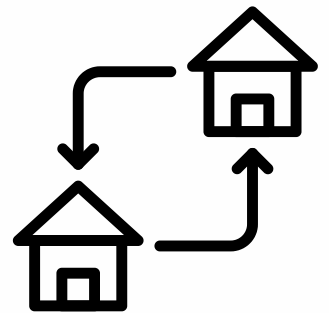
Relocation Requests

Relocation requests concerning moving with children are subject to stringent considerations, primarily due to the legal complexities involved and the importance of the children's best interests.

1. Legal Framework: The legal framework governing family law in Australia is primarily derived from the Family Law Act 1975 (Cth), which sets out the principles to be considered when making decisions about children's care, welfare, and development. The Act emphasises that the best interests of the child are the main consideration.

2. Consent Requirement: When a parent wishes to relocate with their children, whether the move is local, interstate, or international, they must first seek the consent of the other parent. This is because both parents typically have parental responsibility for their children, meaning they have a role in making decisions about major long-term issues affecting their children, including where they live.

3. Best Interests of the Child: In considering relocation requests, the primary consideration is the best interests of the child. This includes considering the effect of the change on the child, the nature of the child's relationship with both parents and other significant individuals, and the practical difficulty and expense of a child spending time with the other parent should the relocation occur.





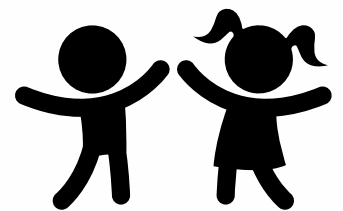
4. Legal Process: If the other parent does not consent to the relocation, the parent wishing to move with the child must apply to the Family Court or the Federal Circuit Court for a relocation order. The court will then consider a range of factors, including but not limited to the reasons for the proposed relocation, the impact on the child's relationship with the non-relocating parent and other family members, and how the relocation will affect the child's overall welfare and development.

5. Court Considerations: The court's decision-making process is comprehensive and individualised, focusing on the specifics of each case. Factors such as the distance of the relocation, the reasons behind the proposed move (such as employment opportunities, family support, or health reasons), and the feasibility of maintaining a meaningful relationship between the child and the non-relocating parent are critically assessed.

6. Alternative Dispute Resolution: Before proceeding to court, parents are encouraged to seek mediation to resolve their differences regarding relocation. Mediation can provide a more amicable and less adversarial means of reaching an agreement that serves the child's best interests while considering the parents' wishes and circumstances.

REMEMBER !

CHILD RELOCATION DECISIONS FOCUS ON THE CHILD'S WELFARE, REQUIRE BOTH PARENTS' AGREEMENT, AND INVOLVE LEGAL EVALUATION AND MEDIATION, GUIDED BY THE FAMILY LAW ACT 1975.





Impasse in Agreements

If parents cannot agree on custody arrangements, professional mediation, legal counsel, and, if necessary, court intervention can help establish a suitable plan.

Child's Input

1. Children's Input in Family law Matters: The Family law Act provides that in making decisions about children, the court must consider, as a primary consideration, the benefit to the child of having a meaningful relationship with both of the child's parents and the need to protect the child from physical or psychological harm. Within this framework, the Act acknowledges that children should have the opportunity to express their views, and those views should be taken into account, taking into consideration the child's age and maturity.

2. Role of Family Reports: A Family Report is a common way for the court to obtain insights into the child's views, needs, and wishes. It is prepared by a family consultant, who is usually a psychologist or social worker with expertise in child and family issues. The family consultant meets with all parties involved, including the children, to assess the family situation and the child's relationships with their parents and other significant individuals. The report provides an independent assessment of the issues in the case from the perspective of the child's best interests, including the child's views if they are of an age and maturity where expressing a view is appropriate. It is important to note that the report may cost a significant amount of money, often thousands of dollars, so agreement as to who will pay for this is critical and a court order may be required.

3. Independent Children's Lawyer (ICL): An Independent Children's Lawyer may be appointed to represent the interests of the child in complex cases, such as those involving allegations of abuse or high conflict. The ICL's role is to ensure that the child's views are communicated to the court, alongside other evidence regarding the child's best interests. The ICL gathers information from various sources, including the child, their parents, schools, and other relevant professionals. While the ICL considers the child's views, their primary duty is to advocate for outcomes that they believe are in the best interests of the child, which may not always align with the child's stated preferences.



4. Children's Input in Family law Matters: The Family law Act provides that in making decisions about children, the court must consider, as a primary consideration, the benefit to the child of having a meaningful relationship with both of the child's parents and the need to protect the child from physical or psychological harm. Within this framework, the Act acknowledges that children should have the opportunity to express their views, and those views should be taken into account, taking into consideration the child's age and maturity.

5. Role of Family Reports: A Family Report is a common way for the court to obtain insights into the child's views, needs, and wishes. It is prepared by a family consultant, who is usually a psychologist or social worker with expertise in child and family issues. The family consultant meets with all parties involved, including the children, to assess the family situation and the child's relationships with their parents and other significant individuals. The report provides an independent assessment of the issues in the case from the perspective of the child's best interests, including the child's views if they are of an age and maturity where expressing a view is appropriate. It is important to note that the report may cost a significant amount of money, often thousands of dollars, so agreement as to who will pay for this is critical and a court order may be required.

6. Independent Children's Lawyer (ICL): An Independent Children's Lawyer may be appointed to represent the interests of the child in complex cases, such as those involving allegations of abuse or high conflict. The ICL's role is to ensure that the child's views are communicated to the court, alongside other evidence regarding the child's best interests. The ICL gathers information from various sources, including the child, their parents, schools, and other relevant professionals. While the ICL considers the child's views, their primary duty is to advocate for outcomes that they believe are in the best interests of the child, which may not always align with the child's stated preferences.



**If you fear
that your
child's safety
is at risk, call
000
immediately.**

International Travel

Consent from both parents is needed for international travel with children, including passport application signatures. Legal recourse is available if consent is withheld without valid concerns.

Child Alert Requests – Passport Office

If you believe your child may be taken overseas imminently, call one of the following phone numbers and explain the urgency of the situation:

1300 352 000 (Federal Circuit and Family Court of Australia, except Western Australia)

1800 199 008 (Family Court of Western Australia)

131 237 AFP Australian Federal Police Family Law Section

If the matter is less urgent, you need to seek legal advice to obtain a court order that will allow the Australian Federal Police to enter the child's details on the Family law Watchlist.



**PROTECTING OUR
CHILDREN MEANS
PUTTING THEM FIRST
AND MAKING SURE
THEY ARE SAFE,
HEALTHY, AND READY
TO LEARN**

- M OBAMA

Limiting Parental Access

In situations where a parent's ability to care for the children is compromised, the court may restrict access to protect the children's welfare.

Provide Orders to Childcare / School

Ensure that any court orders and parenting plans relevant to your children are provided to your child's school and childcare to ensure they can restrict access to the child to the relevant parent.

Modifying Court Orders

Parenting Orders can be revised through legal channels if significant changes in family circumstances occur, necessitating professional legal advice.



**FAIRNESS DOES NOT
MEAN EVERYONE
GETS THE SAME.
FAIRNESS MEANS
EVERYONE GETS
WHAT THEY NEED.**

- R RIORDAN

FINANCIAL ARRANGEMENTS AFTER SEPARATION

Financial Precautions

Secure your immediate financial situation by dividing joint bank account funds. If you are in doubt as to how much money you should withdraw from your joint bank account, seek urgent legal advice being careful to ensure nobody knows you are doing so. Document and secure copies of all important financial records, including superannuation statements, tax returns, and bank statements. Don't forget important personal documents like your passport and birth certificate.



Understanding Child Support

When parents separate, they must decide on financial contributions for their children's upbringing, known as "child support". This support is categorised into two areas: for children under 18 and for those over 18 who are furthering their education or have a disability.

For Children Under 18

Child support that isn't privately agreed upon between parties can be overseen by the Australian Commonwealth Government's Child Support Agency, which bases payment amounts on both parents' incomes, children's ages, and time spent with each parent. Parents can make private arrangements covering expenses like school fees, healthcare, and extracurricular activities, but for any new expenses post-separation, both parents must agree.

The Child Support Agency has significant power to ensure children are provided for financially.

Formalising Agreements

Parents can document their child support arrangements in a Child Support Agreement, registered with the Child Support Agency, ensuring it meets or exceeds the assessed amount. This agreement can include specific costs not typically covered by the agency, such as private schooling.

When Agreement Fails

If parents can't agree, either can apply for an assessment by the Child Support Agency, which considers various income factors, including for self-employed individuals. If discrepancies arise, such as underreported income, the receiving parent can request a review.



Enforcement and Compliance

If payments are missed, the agency can deduct child support directly from the paying parent's salary and enforce other measures to ensure compliance.

Support for Children Over 18

Child support generally ends when a child turns 18. However, adult child maintenance can be requested for those over 18 needing support for education or due to disability, without considering Centrelink benefits but possibly their own income.

**PEACE IS NOT
ABSENCE OF
CONFLICT, IT IS THE
ABILITY TO HANDLE
CONFLICT BY
PEACEFUL MEANS.**

- R REAGAN

Spousal Maintenance

Separate from child support, spousal maintenance may be awarded where one partner can pay and the other needs financial support, often influenced by caregiving duties or health issues. Courts assess financial needs and paying capacity, which can be complicated by self-employment.

Incorporating Maintenance into Settlements

Spousal maintenance can be factored into property settlements, offering a lump sum alternative to regular payments. Financial Agreements can also stipulate no future spousal maintenance, providing some protection against future claims, though not absolute.



Determining Asset Distribution

Family lawyers and Asset Division

Family lawyers spend a significant amount of their time on asset division. While child custody issues are crucial, they are often resolved by parents, leading lawyers to focus on the complexities of dividing assets. These assets typically include family homes, investment properties, vehicles, superannuation, stocks, and bank savings and often pets and personal items.

Home Ownership

After a separation, buying out the other partner's share in the family home is common, but disagreements about fair division are frequent. A family lawyer can draft a document known as a "binding financial agreement", or apply to court for "consent orders" (which is an agreement reached between the parties that is then approved by the court) which provides an exemption to paying stamp duty / transfer duty in Australian states and territories upon the transfer of title from one spouse or both, to only one.



Factors Considered in Asset Division

Courts and lawyers consider several factors in asset division, including:

- Age and health of each party
- Presence and needs of any children, including their ages, health, and living arrangements
- Each party's earning potential
- Contributions towards assets, including gifts or inheritances



Adjustments for Caregivers

Women, often being primary caregivers, may receive favourable adjustments. A general guideline is a 5% adjustment per child for the parent with whom the children primarily live. This assumes equal incomes, health status, and no significant factors like inheritances affecting the division. It is important to note that these are estimates only and may vary significantly for your particular situation.

General Court Adjustments

Courts typically adjust property assets, allocating 60% to 70% to the parent with whom the children predominantly live, though once again this is an estimate that may be extremely different when your particular situation is addressed.

Staying in the Family Home

Historically, courts allowed the primary caregiver to stay in the family home until the children reached a certain age, but this practice has declined due to its disadvantages to the other parent.

Inheritances

The timing of inheritances can affect their treatment in asset division. Early inheritances are considered joint contributions, while later ones may benefit the recipient more significantly.



**FAMILY LAWYERS
PRIMARILY FOCUS ON
ASSET DIVISION,
CONSIDERING
FACTORS LIKE AGE,
HEALTH, CHILDREN'S
NEEDS, AND
CONTRIBUTIONS
TOWARDS ASSETS, TO
ENSURE A FAIR
DISTRIBUTION.**

Superannuation

Superannuation is often equally split between parties. For example, if one party's superannuation significantly exceeds the other's, adjustments are made to ensure each party ends up with an equal share, though negotiations can lead to alternative arrangements favouring one party's preferences.

This approach to asset division, focusing on fairness and consideration of individual circumstances, underlines the complexity and necessity of legal assistance in these matters. There are special forms that a family lawyer can help you with that can divide superannuation by requiring the fund's trustee to pay money to a different fund.



CONSENT ORDERS AND BINDING FINANCIAL AGREEMENTS ARE LEGAL TOOLS THAT ALLOW COUPLES TO FORMALISE THEIR SEPARATION AGREEMENTS ON ASSETS AND CHILDREN WITHOUT COURT INTERVENTION

FORMALISING YOUR AGREEMENTS

Consent Orders: A Smooth Path to Agreement

Consent Orders are a straightforward way to formalise agreements on children and/or property issues without stepping into a courtroom. Once both parties reach an agreement, a lawyer can draft these orders and submit them to the Court. A Registrar, working from their office, will then approve these orders, provided they are deemed fair and equitable—meaning they align with what a court would likely decide in a hearing. If an agreement deviates significantly from standard court decisions, it might not be approved. In such instances, Binding Financial Agreements offer an alternative.



Binding Financial Agreements: Efficient and Effective

A Binding Financial Agreement (BFA) (known as a Prenuptial Agreement or Prenup' outside of Australia) is a legal document that allows couples to prearrange how their assets and financial resources will be allocated in the event of a separation or divorce.

A BFA can be made before, during, or even after a relationship or marriage has ended.

BFAs are designed to protect assets, clarify financial obligations, and avoid potential disputes by detailing the division of property, financial support, and the distribution of financial resources. This proactive approach provides clarity and peace of mind, allowing couples to manage their financial affairs independently of court processes.

Establishing a Strong Financial Foundation: The Role of BFAs Before Marriage

In relationships, particularly at crucial moments, both financial and emotional implications play significant roles. Binding Financial Agreements (BFAs) offer couples a practical means to address the complexities of their financial union or division. People work together, with the help of their solicitors (a solicitor's signature is compulsory for a BFA to be valid), to reach a satisfactory agreement.

BFAs serve as tailored financial blueprints, adaptable to the unique phases of a relationship, ensuring flexibility and security from the outset or even upon separation. Far from merely protecting assets, these agreements promote open financial dialogue within or before a marriage, setting a firm foundation for handling financial responsibilities, managing assets, and navigating future challenges together.



During a relationship, a BFA highlights shared financial objectives, covering income, investments, property, and debt management. This foresight is invaluable, especially for couples in subsequent marriages, those with significant assets, or complex financial situations. In the event of separation, a BFA simplifies asset division, offering a pre-agreed plan that mitigates the need for legal disputes.

The strengths of a BFA lie in preventing court battles, empowering couples with financial autonomy, and ensuring asset protection. The process of creating a BFA demands independent legal advice, thorough financial disclosure, and careful drafting to ensure clarity, comprehensiveness, and legal validity. While adaptable to life's changes, a BFA must be equitable and negotiated with sensitivity towards each party's emotional state.

Facilitating Fair Financial Futures: Drafting BFAs During Separation

In the context of separation, drafting a BFA serves as a critical tool for managing the division of assets and financial responsibilities in a structured and equitable manner. The process begins with both parties acknowledging the need for such an agreement, motivated by the desire to facilitate a fair and transparent separation process. This necessitates gathering all relevant financial information, ensuring that each party is fully informed of the other's assets and liabilities.

The drafting of a BFA during separation involves detailed negotiations, often with the assistance of legal professionals who can provide independent legal advice to each party. This advice is crucial to ensure that the agreement is not only fair but also adheres to legal standards and protects the interests of both parties. The negotiations are aimed at reaching an equitable distribution of assets, responsibilities for debts, and any necessary support arrangements, all while maintaining a focus on the future well-being of each individual.

Once the terms are agreed upon, the agreement is carefully drafted, capturing all details discussed and ensuring clarity and comprehensiveness. Before finalising, it's crucial that both parties thoroughly review the document, understanding all its provisions fully. The final step involves signing the agreement, which then becomes legally binding. This process, while potentially challenging, is designed to minimise emotional and financial strain, paving the way for a respectful resolution to financial ties and providing a clear path forward for both parties.



THE QUALITY OF OUR LIVES DEPENDS NOT ON WHETHER OR NOT WE HAVE CONFLICTS, BUT ON HOW WE RESPOND TO THEM.

- T CRUM

Exploring Alternatives When Agreement Is Elusive

Mediation: A Path to Mutual Agreement

Mediation offers a constructive approach to resolving disputes over children and property outside the courtroom, sparing parties the cost and stress of a process that can go on for years and cost significant money. This process involves engaging with a qualified mediator who facilitates discussions aimed at reaching a consensus. Mediation typically unfolds over two or three sessions and is most effective when parties share the same space, though remote options like Zoom or Teams are available. With a success rate of about 75% in Australia, mediation stands out as a cost-effective and efficient alternative to court action, often leading to Consent Orders or Binding Financial Agreements upon success.

Going to Court: A Last Resort

Litigation, which is another word for an argument held or under the supervision of the court, is considered the final step for resolving parenting and property disputes and should only be pursued when other avenues have been exhausted. The Federal Circuit and Family Court of Australia, handles such cases when necessary.



PRIVACY ISN'T ABOUT SOMETHING TO HIDE. PRIVACY IS ABOUT SOMETHING TO PROTECT.

- E SNOWDEN

UNDERSTANDING THE DIVORCE PROCESS

Legal Definition of Divorce

Divorce marks the legal termination of a marriage. In Australia, the sole basis for divorce is the irretrievable breakdown of the marriage, demonstrated by a 12-month period of separation. This separation can occur in two ways: either by one partner moving out or by both partners continuing to live together but leading separate lives.

Importantly, in Australia, there is no need to prove a spouse is 'at fault', like in other countries. Whether or not a spouse has cheated or mistreated their spouse in some way is irrelevant to a court granting a divorce to the parties. It is also not necessary for both parties to agree to the divorce in Australia for a court to grant it.



Reasons for Seeking Divorce

Individuals might initiate the divorce process to officially conclude their marital relationship and/or to regain the freedom to remarry.

Steps to Obtain a Divorce

1. **Filing an Application:** The process begins with submitting an application to the Federal Circuit and Family Court. The court sets a hearing date following the application, which can be filed individually or jointly.
2. **Serving the Application:** If only one partner files, they must deliver the divorce application to the other partner in a particular way, called "service".
3. **Attending the Hearing:** The divorce hearing is conducted over the phone. If the couple has children under 18, the applicant or their lawyer must participate in the hearing to assure the court about the children's care and wellbeing as outlined in the application. Attendance by the other partner isn't mandatory.
4. **Issuing the Divorce Order:** A Divorce Order is issued one month and one day after the divorce is granted, finalising the divorce. Remarriage is not allowed before receiving this order.

Opposing a Divorce

Sometimes, a partner may contest the divorce, possibly disputing the separation duration. Such objections can delay the process, leading to a contested hearing where both partners present evidence.

Important Considerations

- **The 12-Month Rule:** After the Divorce Order is issued, you have 12 months to apply for property settlement or spousal maintenance.
- **Filing Fee:** There's a fee for filing a Divorce Application, currently just over \$1,000. This is in addition to your legal fees if you retain a solicitor to assist.



Social Media in Family Law

In our tech-savvy world, social media has become an ever-present part of daily life. An astonishing statistic reveals that on a single day, Facebook saw activity from 1 billion users—that's about 14% of the global population!

Social media's influence extends into the realm of Australian Family law, serving dual roles. It offers a positive avenue for parents to maintain contact with their children via messages, photos, and updates. Many Parenting Orders now facilitate child-parent communication through various platforms like Facebook, Instagram, and Twitter during periods of separation.



A Double-Edged Sword

However, social media can also present challenges. During the tense periods of family law disputes, individuals may resort to social media to express their frustrations through negative comments, often supported by a network of friends and family. While this might seem harmless at the moment, it can lead to significant legal repercussions. Lawyers frequently examine social media activity for evidence that could impact a case negatively, including emails, texts, and other communications that could be seen as derogatory.

Moreover, seemingly innocuous actions, such as discussing case details or criticising legal parties on Facebook, might not only harm one's case but also result in legal penalties. Under the Family law Act 1975, publishing any case-related information that identifies the involved parties or children can carry a penalty of up to one year in prison. A moment of anger leading to a quick social media post could have serious consequences.



The Courts' Stance on Social Media

The Family Courts are increasingly ready to enforce rules over social media conduct, emphasising the permanence of online posts and pictures. Once shared publicly, these cannot be taken back. Therefore, individuals involved in Family law cases should be cautious about their online behaviour. The advice is clear: confront problems directly rather than venting on social media platforms.

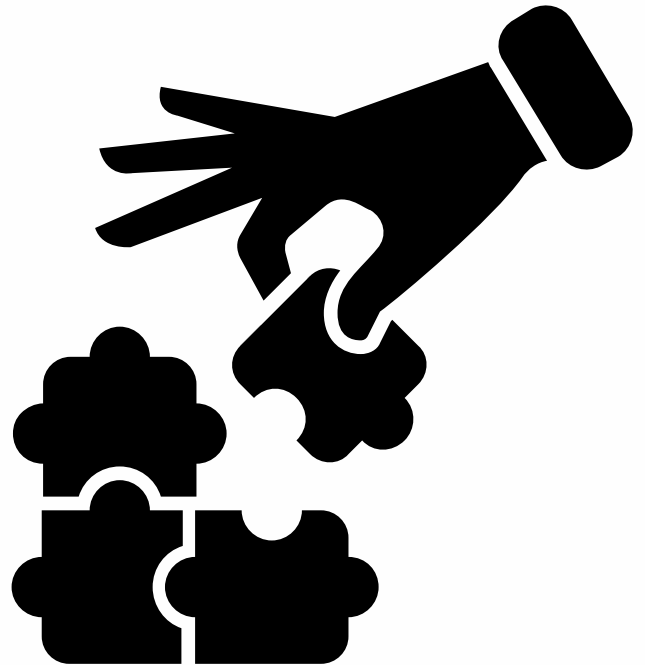
Digital Assets and Social Media Management

Managing online presence and assets is an important aspect to consider during separation or divorce. The below steps guide you through securing your digital footprint, including social media, online banking, and shared digital media

- **Inventory Digital Assets:** List all online accounts, social media profiles, digital libraries, and storage accounts. Identify which are personal, joint, or related to your children.
- **Update Security Settings:** Change passwords and security questions for personal accounts. For joint accounts, decide on access rights and modifications together, if possible.
- **Social Media Conduct:** Agree on a social media code of conduct to maintain privacy and respect during the process. Consider unfollowing or blocking if it aids emotional well-being, but avoid public discussions or disputes.
- **Digital Content and Memories:** Decide how to handle shared digital content, like photos or videos. Options include duplicating content, dividing it, or using cloud storage for shared access.
- **Legal Considerations:** Consult with your lawyer to understand how digital assets are divided in divorce proceedings, including any cryptocurrency or online businesses.
- **Privacy and Protection:** Increase privacy settings on social media and remove any sensitive information that may affect divorce proceedings or personal security.



Navigating the tumultuous waters of separation, child custody, property division, and divorce can be challenging, but with the right guidance and information, you can make informed decisions that protect your interests and the well-being of your family. Remember that Family law is a complex area, and seeking advice from an experienced Family lawyer is essential to ensure you fully understand your rights and responsibilities and to help you achieve the best possible outcome for your unique circumstances



CONTACT US

We hope this guide has provided you with valuable insights. To find a family lawyer who is right for you visit [click here](#).